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EXAMINER

ALIE, GHASSEM

ART UNIT

PAPER NUMBER

3724

DATE MAILED: 07/11/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/047,586

Applicant(s)

SUER ET AL.

Examiner

Ghassem Alie

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 April 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) 3, 5, 8, 11, 12, and 15 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 2, 4, 6, 7, 9, 10, 13, 14, 16, and 17 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 29 April 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Correction

1. In paragraph 8 of the previous Office Action mailed on 01/25/05, it was mistakenly stated that claims 1, 2, 4, 6, 9, 10, 16, and 17 are rejection under 35 U.S.C. 103 (a) over Pesce in view of Berler. However, claims 1, 2, 4, 9, 10, 16, and 17 have been rejected under 35 U.S.C. 103 (a) over Pesce and claims 6, 7, 13, 14 have been rejected under Pesce in view of Berler. Berler is not part of the rejection of claims 1, 2, 4, 9, 10, 16, and 17. This is clear in paragraph 8 of the previous Office Action. Claims 1, 2, 4, 9, 10, 16, and 17 have been rejected over Pesce. See Lines 2 and 3 of paragraph 8 of the previous Office Action. However, claims 6, 7, 13, and 14 have been rejected over Pesce in view of Berler. See lines 1-3 in paragraph 9 of the pervious Office Action.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1, 2, and 4 are rejected under 35 U.S.C. 102(b) as being anticipated by Gagliardi, Jr. (5,771,771), hereinafter Gagliardi. Regarding claim 1, Gagliardi teaches a utensil 10 having an elongated hollow body 14, which is supporting an elongated food item 12. Gagliardi also teaches that the elongated hollow body 14 includes an inner wall 20, and outer wall 22 forming an interior 28, an open first end 24 and a second end 26, a diameter, and a length greater than the diameter. Gagliardi also teaches a plurality of the blades 38 extending across the interior 28 in the plane perpendicular to the inner 20 and outer 22 walls

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for cutting a food item 12. Gagliardi also teaches that the plurality of blades 38 is the only blades of the food utensil and each of the plurality of blades is substantially laterally aligned at an outermost portion thereof with a respective outermost portion of each of remaining plurality of blades 38. The blades 38 are in two tiers and each blade is considered to be substantially laterally aligned to the remaining plurality of blades. The blades 38 are in proper relation and arrangement with respect to one another. Therefore, the blades 38 are aligned with respect to one another. See Figs 1-5 and col. 2, lines 16-67 and col. 3, lines 1-67 and col. 4, lines 1-56 in Gagliardi.

Regarding claim 2, Gagliardi teaches everything noted above including a hollow body 14 having an inner wall 20 and outer wall 22 forming an interior 28, an open first end 24 and a second end 26, a cross-sectional area, and a length greater than the cross-sectional area. Gagliardi also teaches a plurality of the blades 38 extending across the interior 28 in the plane perpendicular to the inner 20 and outer 22 walls for cutting a food item 12. See Figs 1-5 and col. 2, lines 16-67 and col. 3, lines 1-67 and col. 4, lines 1-56 in Gagliardi.

Regarding claim 4, Gagliardi teaches everything noted above including a base 42, which is fixed to the second end 26. See Figs. 1-5 in Gagliardi.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

To the degree that it could be argued that the blades 38 are not substantially laterally aligned in Garliardi the Rejection below is applied.

5. Claim 1, 2, and 4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Garliardi or in view of Pesce (2,675,317) or Priore (3,060,838). Regarding claim 1, Gagliardi teaches a utensil 10 having an elongated hollow body 14, which is supporting an elongated food item 12. Gagliardi also teaches that the elongated hollow body 14 includes an inner wall 20, and outer wall 22 forming an interior 28, an open first end 24 and a second end 26, a diameter, and a length greater than the diameter. Gagliardi also teaches a plurality of the blades 38 extending across the interior 28 in the plane perpendicular to the inner 20 and outer 22 walls for cutting a food item 12. Gagliardi also teaches that the plurality of blades 38 is the only blades of the food utensil. See Figs 1-5 and col. 2, lines 16-67 and col. 3, lines 1-67 and col. 4, lines 1-56 in Gagliardi. Gagliardi does not expressly that the plurality of blades is substantially laterally aligned at an outermost portion thereof with a respective outermost portion of each of remaining plurality of blades. The blades 38 are in two tiers and each blade in each blade 38 in each tier is substantially laterally aligned with the remaining blades in the tier. In addition, if one of blade tier is omitted, each blade would be latterly aligned with other blades in the same tier. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to omit or eliminate one of the tier of blades in Gagliardi, since it has been held that omission of an element and its function in a combination where the remaining elements perform the same functions as before involves only routine skill in the art. In re Karlson, 136 USPQ 184. Furthermore, the use one tier of

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blades or blades which are substantially laterally aligned with respect to one another for cutting elongated food products is well known in the art such as taught by Pesce or Priore. Priore teaches one tier of blades or blades 40 which are substantially laterally aligned with respect to one another for cutting elongated food products. See Figs. 1-4 in Priore. Pesce also teaches one tier of blades or blades 14, 46, which are substantially laterally aligned with respect to one another for cutting, elongated food products. See Figs. 1-12 in Pesce. It would have been obvious to a person of ordinary skill in the art to provide Garliardi's cutting device only with one tier of blades as taught by Pesce or Priore in order to cut slice the elongated food item to a desired and specific portions.

Regarding claim 2, Gagliardi teaches everything noted above including a hollow body 14 having an inner wall 20 and outer wall 22 forming an interior 28, an open first end 24 and a second end 26, a cross-sectional area, and a length greater than the cross-sectional area. Gagliardi also teaches Gagliardi also teaches a plurality of the blades 38 extending across the interior 28 in the plane perpendicular to the inner 20 and outer 22 walls for cutting a food item 12. See Figs 1-5 and col. 2, lines 16-67 and col. 3, lines 1-67 and col. 4, lines 1-56 in Gagliardi.

Regarding claim 4, Gagliardi teaches everything noted above including a base 42, which is fixed to the second end 26. See Figs. 1-5 in Gagliardi.

6. Claims 6 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gagliardi and in further view of Berler (4,250,771). Regarding claims 6 and 7, Gagliardi, as modified above, teaches everything noted above except a food receptacle removably attached to the first open end and having a corresponding prong extending through a hole for holding

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a food product. However the use of the food holder to hold the food during the cutting is well known in the art such as taught by Berler. Berler teaches a food receptacle 18 (holder) attached to the first open end and having a corresponding prong 22 extending through a hole 16 for holding a food 19. See Fig. 1 and col. 3, lines 23-66. It would have been obvious to a person of ordinary skill in the art to provide Gagliardi's food utensil with the food receptacle as taught by Berler in order to facilitate the slicing of the food by holding tighter the food item while the food item is being sliced.

7. Claims 6 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gagliardi in view of Pesce or Priore, as applied to claim 1, and in further view of Berler. Regarding claims 6 and 7, Gagliardi, as modified above, teaches everything noted above except a food receptacle removably attached to the first open end and having a corresponding prong extending through a hole for holding a food product. However the use of the food holder to hold the food during the cutting is well known in the art such as taught by Berler. Berler teaches a food receptacle 18 (holder) attached to the first open end and having a corresponding prong 22 extending through a hole 16 for holding a food 19. See Fig. 1 and col. 3, lines 23-66. It would have been obvious to a person of ordinary skill in the art to provide Gagliardi's food utensil, as modified by Pesce or Priore, with the food receptacle as taught by Berler in order to facilitate the slicing of the food by holding tighter the food item while the food item is being sliced.

8. Claim 1, 2, 4, 9, 10, 16, and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pesce (2,675,580) in view of Gagliardi or Aguerrevere et al. (5,271,317), hereinafter Arguerrevere. Regarding claims 1, 2, 4, 9, 10, 16, and 17, Pesce teaches a utensil

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10 having an elongated hollow body 13, 45, which is supporting an elongated food item 22. Pesce also teaches that elongated hollow body 13, 45 includes an inner wall, and outer wall forming an interior, an open first end and a second end, a diameter, and a length. Pesce also teaches a plurality of the blades 14, 46 extending across the interior in the plane perpendicular to the inner and outer walls for cutting a food item 22. Pesce also teaches that plurality of blades 14, 46 is the only blades of the food utensil. Pesce also teaches that the plurality of blades is substantially laterally aligned at an outermost portion thereof with a respective outermost portion of each of remaining plurality of blades. See Figs. 1-12 and col. 3, lines 1-65 and col. 4, lines 1-58 in Pesce. Pesce does not expressly teach that the length of the elongated body is greater than its diameter. However, the use of a utensil for cutting an elongated food item and having an elongated body with a length greater than its diameter is well known in the art such as taught by Gagliardi or Aguerrevere. Gagliardi teaches a utensil 10 having an elongated hollow body 14, which is supporting an elongated food item 12. Gagliardi also teaches that the elongated hollow body 14 includes an inner wall 20, and outer wall 22 forming an interior 28, an open first end 24 and a second end 26, a diameter, and a length greater than the diameter. Gagliardi also teaches a plurality of the blades 38 extending across the interior 28 in the plane perpendicular to the inner 20 and outer 22 walls for cutting a food item 12. Gagliardi also teaches that the plurality of blades 38 is the only blades of the food utensil. See Figs 1-5 and col. 2, lines 16-67 and col. 3, lines 1-67 and col. 4, lines 1-56 in Gagliardi. Aguerrevere also teaches a food utensil 2 including an elongated body 25 having an inner wall and an outer wall forming an interior. Aguerrevere also teaches that elongated body 25 includes an open first end, a second open end, and a diameter, and a

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length greater than the diameter. It should be noted that Aguerrevere's utensil can be used for slicing elongated food items. See Fig. 1-12 and col. 2, lines 24-68 and col. 3, lines 1-43 in Aguerrevere. It would have been obvious to a person of ordinary skill in the art to provide Pesce's elongate body with the length that is greater than its diameter, as taught by Gagliardi or Aguerrevere, in order to increase the support area of the elongated food item inside the elongated body and facilitate the slicing of the elongated food item.

9. Claims 6, 7, 13, and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pesce in view of Gagliardi or Aguerrevere and in further view of Berler. Regarding claims 6, 7, 13, and 14, Pesce teaches a utensil 10 having an elongated hollow body 13, 45, which is supporting an elongated food item 22. Pesce also teaches that elongated hollow body 13, 45 includes an inner wall, and outer wall forming an interior, an open first end and a second end, a diameter, and a length. Pesce also teaches a plurality of the blades 14, 46 extending across the interior in the plane perpendicular to the inner and outer walls for cutting a food item 22. Pesce also teaches that plurality of blades 14, 46 is the only blades of the food utensil. Pesce also teaches that the plurality of blades is substantially laterally aligned at an outermost portion thereof with a respective outermost portion of each of remaining plurality of blades. See Figs. 1-12 and col. 3, lines 1-65 and col. 4, lines 1-58 in Pesce. Pesce does not expressly teach that the length of the elongated body is greater than its diameter. However, the use of a utensil for cutting an elongated food item and having a elongated body with a length greater than its diameter is well known in the art such as taught by Gagliardi or Aguerrevere. Gagliardi teaches a utensil 10 having an elongated hollow body 14, which is supporting an elongated food item 12. Gagliardi also teaches that the elongated

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hollow body 14 includes an inner wall 20, and outer wall 22 forming an interior 28, an open first end 24 and a second end 26, a diameter, and a length greater than the diameter. Gagliardi also teaches a plurality of the blades 38 extending across the interior 28 in the plane perpendicular to the inner 20 and outer 22 walls for cutting a food item 12. Gagliardi also teaches that the plurality of blades 38 is the only blades of the food utensil. See Figs 1-5 and col. 2, lines 16-67 and col. 3, lines 1-67 and col. 4, lines 1-56 in Gagliardi. Aguerrevere also teaches a food utensil 2 including an elongated body 25 having an inner wall and an outer wall forming an interior. Aguerrevere also teaches that elongated body 25 includes an open first end, a second open end, and a diameter, and a length greater than the diameter. It should be note that Aguerrevere's utensil can be used for slicing elongated food items. See Fig. 1-12 and col. 2, lines 24-68 and col. 3, lines 1-43 in Aguerrevere. It would have been obvious to a person of ordinary skill in the art to provide Pesce's elongate body with the length that is greater than its diameter, as taught by Gagliardi or Aguerrevere, in order to increase the support area of the elongated food item inside the elongated body and facilitate the slicing of the elongated food item. Pesce in view of Gagliardi or Aguerrevere does not teach a food receptacle removably attached to the first open end and having a corresponding prong extending through a hole for holding a food product. However the use of the food holder to hold the food during the cutting is well known in the art such as taught by Berler. Berler teaches a food receptacle 18 (holder) attached to the first open end and having a corresponding prong 22 extending through a hole 16 for holding a food 19. See Fig. 1 and col. 3, lines 23-66. It would have been obvious to a person of ordinary skill in the art to provide Pesce's food utensil, as modified by Gagliardi or Aguerrevere, with the food

receptacle as taught by Berler in order to facilitate the slicing of the food by holding tighter the food item while the food item is being sliced.

10. Claims 13 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lin in view of Berler. Regarding claims 13 and 14, Lin teaches a utensil 10 having an elongated hollow body 12, which is supporting an elongated food item 60. Lin also teaches that elongated hollow body 12 includes an inner wall, and outer wall forming an interior, an open first end and a second end, a diameter, and a length greater than the diameter. Lin also teaches a plurality of the blades 20a-24b extending across the interior in the plane perpendicular to the inner and outer walls for cutting a food item 60. It should be noted that orange 60 is considered to be an elongated food item. In addition, Lin's food utensil is capable of slicing or cutting an elongated food item such as a sausage or a hot dog. Lin also teaches that plurality of blades 20a-24b is the only blades of the food utensil. Lin also teaches that the plurality of blades is fixed within the interior and extending across the interior thereby preventing movement of the plurality of blades. See Figs. 1-5b and col. 3, lines 1-68 and col. 4, lines 1-48 in Lin. Lin does not teach a food receptacle removably attached to the first open end and having a corresponding prong extending through a hole for holding a food product. However the use of the food holder to hold the food during the cutting is well known in the art such as taught by Berler. Berler teaches a food receptacle 18 (holder) attached to the first open end and having a corresponding prong 22 extending through a hole 16 for holding a food 19. See Fig. 1 and col. 3, lines 23-66. It would have been obvious to a person of ordinary skill in the art to provide Lin's food utensil with the food receptacle as

taught by Berler in order to facilitate the slicing of the food by holding tighter the food item while the food item is being sliced.

Response to Arguments

11. Applicant's arguments filed on 04/25/05 with respect to claims above have been considered but they are not persuasive. Applicant's argument that Gagliardi does not teach that each of the plurality of blades is substantially and laterally aligned with the remainder of the plurality of blades is not persuasive. Gagliardi teaches that the plurality of blades 38 is the only blades of the food utensil and each of the plurality of blades is substantially laterally aligned at an outermost portion thereof with a respective outermost portion of each of remaining plurality of blades 38. Blades 38 are in two tiers and each blade is considered to be substantially laterally aligned to the remaining plurality of blades. Blades 38 are in proper relation and arrangement with respect to one another. Therefore, the blades 38 are aligned with respect to one another. In addition, if of tear of the blades 38 is omitted, each blade would be latterly aligned with other blades in the same tear. Therefore, It would been obvious to one having ordinary skill in the art at the time the invention was made to omit or eliminate one of the tier of blades in Gagliardi, since it has been held that omission of an element and its function in a combination where the remaining elements perform the same functions as before involves only routine skill in the art. In re Karlson, 136 USPQ 184. Furthermore, the use one tier of blades or blades which are substantially laterally aligned with respect to one another for cutting elongated food products is well known in the art such as is evident in Aguerrevere et al. (5,271,317), Pesce (2,675,580), Priore (3,060,838), or Gagliardi, Jr. (5,069,914).

Applicant's arguments that Pesce does not teach an elongated housing wherein its length is greater than its diameter and there is no motivation or suggestion to combine Pesce with another reference that teaches an elongated body or housing are not persuasive. Pesce teaches everything set forth in claims 1, 2, 4, 9, 16, and 17 except that the elongated body has a length greater than its diameter. However, as stated above, the use of the utensil for slicing hot dog or the like and having a length greater than its diameter is well known in the art and is evident in Gagliardi or in Aguerrevere et al. (5,271,317). It should be noted that the utensil with elongated body that has a length greater than its diameter provides a larger support area for the elongated food and this is well known in the art such as taught by Gagliardi, Aguerrevere, or Lin. Therefore, it would have been obvious to a person of ordinary skill in the art to provide Pesce's elongated body with a length greater than its diameter, as taught by Gagliardi, Aguerrevere, or Lin, in order to provide a larger support area for the elongated food item and facilitate cutting or slicing of the elongated food item. Applicant argument that the Examiner has not shown the requisite motivation to combine the references is not persuasive. The body of the utensil in cited references Gagliardi or Aguerrevere et al. is elongated in order to support an elongated food item. It is obvious that the elongated body in Gagliardi or Aguerrevere et al. provides a larger support area for the elongated food item. Therefore, there is a clear motivation to combine the teaching of a body for holding an elongated food with the teaching of an elongated body having a greater length than its diameter in order to provide a greater support area for holding larger portion of the elongated food item. This is old and well known in the art and the cited references provide necessary

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evidence for modifying a body for holding an elongated food item to a body that is elongated and has a length greater than its diameter.

Applicant's argument that Pesce teaches blades 14 that rotate inside collar 14 and does not teach that the blades are fixed to the inner wall thereby preventing movement of the plurality of blades is not persuasive. Blades 14 are fixed to the inner wall of elongated body 13 and do not rotate relative to body 13. If the body or collar 13 is rotated, the blades will also rotated with body or collar 13. Similarly, if elongated body 46 in the instant invention rotates, the blades, which are fixed to the body, rotate with the elongated body. See Fig. 15 of the instant invention. Therefore, Pesce teaches that the blades are fixed to the inner wall in a manner that movement of the blades relative to the elongated body is prevented.

Conclusion

12. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

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13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ghassem Alie whose telephone number is (571) 272-4501. The examiner can normally be reached on Mon-Fri 8:30 am - 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Allan Shoap can be reached on (571) 272-4514. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, SEE <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (too-free).



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July 5, 2005